

## Alcohol Liability

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It's no secret that if you've been drinking heavily and your boat is involved in a serious accident, you could be liable (and in serious trouble). What may not be as apparent is the liability you assume for other people aboard who have been drinking. This is true even if you haven't had a drop of alcohol and are completely sober.

*Seaworthy* frequently writes about the effect that alcohol has on a drinker's balance and perception, which can lead to serious falls. The falls—on deck, from fly bridges, into open hatches, and down the companionway—can happen while the boat is being tossed around in a storm or while the boat is moored quietly at a dock. In addition to stumbling on deck, the BoatU.S. claim files contain numerous instances of guests who drowned after falling (or diving) overboard. Inevitably, the toxicology reports showed a high blood alcohol level (BAC), a condition that was not always noticed by the skipper or other guests.

One recent claim involved a guest who had been drinking beer for most of the day while the boat was tied in its covered slip. The man fell asleep on a cushioned bench at the stern and apparently awoke in the middle of the night, fell from the boat or the dock, and drowned. The boat's owner, who was sleeping in the cabin, heard a loud "thump" and rushed aft to see what happened. But, despite looking for several hours, he could not find any trace of his friend until well after daybreak (Claim #0101879).

In another recent claim involving alcohol and guests, a group of people who had been drinking at a bar on Lake Erie were headed back to the marina aboard a 37' boat when someone noticed one of the men was missing. The skipper, who had not been drinking, immediately turned the boat around. It was late in the day (just before sunset) and, despite searching for over an hour, the man could not be found. He had drowned. An autopsy found that his blood alcohol content (BAC) was .028—three times the legal limit (Claim #0009514).

Both of these cases resulted in lawsuits against the skipper. There have been many others that were similar. The complaints always allege that the skipper should have known of the guest's condition and prevented his or her injury or death. In some states, a boat owner can be found liable simply for serving the alcohol.

Unlike passengers in an automobile, who can be secured with seat belts, passengers on a boat are often free to roam about and even have more drinks. What is a sober and otherwise competent skipper supposed to do? For one thing, the skipper should limit the amount of alcohol that's consumed aboard the boat and stop serving drinks to someone who is intoxicated. As a practical matter, this isn't always easy; some people bring their own alcohol or, like the man on Lake Erie, buy it at a restaurant or bar. When the guest is a heavy drinker, his or her condition may not be readily apparent. If you are going to be underway after your guests have been drinking, one possible solution is to have extra hands aboard who haven't been drinking to help keep an eye on an inebriated guest while

you manage the boat. Guests should be instructed to remain seated at all times while underway and you should do your best to make sure they comply. You may also be able to trust someone else to take the helm while you keep an eye on guests. The best solution, however, if you have friends who have a problem with alcohol, is to invite them to your home and not to your boat.

### **Liability and “Umbrella” Policies**

In the event of a serious accident, the court typically apportions liability. If someone dies, the boat owner’s liability may be anywhere from 0% to 100%, depending on the degree of perceived negligence. The dollar amount depends on the victim’s age at the time of death and what he or she would have been expected to earn, had they lived. In some states, an additional award may be permitted for conscious pain and suffering as well as for the “loss of society” (companionship) by the survivors. Serious injuries that result in permanent disability are also potential big-dollar claims because of the ongoing nature of the impairment, future medical bills, and possibly reduced earnings.

The liability limit on your boat policy is the maximum that will be paid out for a single accident, regardless of how many people are injured or die. If the decedent or injured person is young and was earning a high salary, that person’s claim alone may be worth more than your liability limit. For example, a 40-year-old software developer would have otherwise been expected to continue working for at least another 20 years. Even if the victim had been drinking heavily and the boat’s owner were found to be only 10% liable, the value of the claim would likely exceed \$300,000 in liability coverage, based on the typical salary of a person in his profession. This is why many people opt to have an “umbrella” (excess) policy.

There have been other cases where an insured did have an umbrella policy above the liability limits on his or her BoatU.S. policy, but coverage by the umbrella carrier was denied. Typically, the umbrella policies require the policyholder to have a certain amount of liability coverage—usually \$300,000—in the underlying policies (home, cars, boat, RVs, etc.). The umbrella policy covers verdict or settlement amounts above the liability limit on the underlying policy. If your boat’s insurance does not carry the required limit, you are personally responsible for the difference.

Another mistake that is sometimes made is to buy a boat and assume it will be covered by your existing umbrella policy. It may not be, unless the carrier has been notified in writing that you now own a boat. In one claim recently, the company that provided the excess coverage would not cover the liability in a drowning accident because the boat’s owner had not declared the boat on his umbrella policy.

The message: If you have an umbrella insurance policy, double-check the amount of liability you’re required to have on your boat policy and make sure that your boat (as well as any second homes, automobiles, RVs, etc.) are listed on that policy!